

Regular Session, 2003

ACT No. 9

SENATE BILL NO. 710 (Duplicate of House Bill No. 1660)

BY SENATOR THEUNISSEN AND REPRESENTATIVE CRANE AND
COAUTHORED BY SENATORS BOISSIERE, CRAVINS,
DARDENNE, DUPRE, FONTENOT, HAINKEL, IRONS,
B. JONES, LAMBERT, LENTINI, TARVER AND
HOLLIS AND REPRESENTATIVES K. CARTER,
ALARIO, ALEXANDER, BRUNEAU, CROWE,
DAMICO, DANIEL, DARTEZ, DEWITT, DIEZ,
DOWNER, DOWNS, ERDEY, FLAVIN, FRUGE,
HAMMETT, M. JACKSON, JOHNS, LAFLEUR,
LANCASTER, LEBLANC, MCVEA, MONTGOMERY,
MORRISH, NEVERS, PINAC, PITRE, SALTER,
SCALISE, JANE SMITH, SNEED, STELLY, STRAIN,
TOWNSEND, WALKER, WALSWORTH AND
WINSTON

AN ACT

To amend and reenact R.S. 17:3983(A)(4)(a), 3991(C)(6) and (H), and
3996(C), (G), and (H), to enact R.S. 17:10.5, Part VII of Chapter 8 of
Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of
R.S. 17:1990, R.S. 17:3973(2)(b)(v), 3983(A)(2)(c) and (F), and
3991(B)(1)(d), and R.S. 36:651(F), and to repeal R.S. 17:3983(A)(5),
relative to defining and providing for the management, supervision, and
operation of failed public schools; to provide for a definition of a failed
school; to provide for the duties and responsibilities of the State Board
of Elementary and Secondary Education; to provide for the effect of a
school being identified as a failed school; to establish and provide for
governance and operation of the Recovery School District; to provide
for the jurisdiction and authority of the school district; to provide with
regard to the funding for the operation of schools by the district; to
provide with regard to the persons employed by certain school systems

and by the district; to provide with regard to facilities; to establish and provide for a Type 5 charter school; to eliminate the termination of the authority for certain chartering authorities to enter into certain types of charters; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:3983(A)(4)(a), 3991(C)(6) and (H), and 3996(C), (G), and (H) are hereby amended and reenacted, and R.S. 17:10.5, Part VII of Chapter 8 of Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:1990, and R.S. 17:3973(2)(b)(v) and 3983(A)(2)(c) and (F), and 3991(B)(1)(d) are hereby enacted to read as follows:

§10.5. School and district accountability; failing schools; transfer to
Recovery School District

R.S. 17:10.5 is all new law.

A.(1) An elementary or secondary school operating under the jurisdiction and direction of any city, parish, or other local public school board or any other public entity which is academically unacceptable under a uniform statewide program of school accountability established pursuant to rules adopted by the State Board of Elementary and Secondary Education under authority of law, referred to in this Section as "the state board", shall be designated as a failed school. When a city, parish, or other local public school board or other public entity: (a) fails to present a plan to reconstitute the failed school to the state board, as required pursuant to such an accountability program, or (b) presents a reconstitution plan that is unacceptable to the state board, or (c) fails at any time to comply with the terms of the reconstitution plan approved by the state board, or (d) the school has

been labeled an academically unacceptable school for four consecutive years, the school shall be removed from the jurisdiction of the city, parish, or other local public school board or other public entity and transferred to the jurisdiction of the Recovery School District established in R.S. 17:1990, provided the state board approves the transfer.

(2) Procedures and standards for aligning the state program of school and district accountability with the requirements of this Section and Part VII of Chapter 8 of this Title shall be adopted by the state board by rule.

B. A failed school shall be reorganized, as necessary, and operated by the Recovery School District pursuant to its authority in whatever manner is determined by the administering agency of the Recovery School District to be most likely to bring the school to an acceptable level of performance as determined pursuant to the accountability plan.

C.(1)(a) The Recovery School District shall retain jurisdiction over any school transferred to it until the state board, upon the recommendation of the district's administering agency, enters into an agreement with the city, parish, or other local public school board or any other public entity from which the school was transferred for its return to the jurisdiction of such school board or public entity. When a school in the district is no longer academically unacceptable, the state board shall require the administering agency of the district to seek agreement for the return of the school.

(b) Such agreement shall include all of the following:

(i) Details for the operation of the school by the city, parish, or

other local public school board or any other public entity, including provisions for the continuation of the programs that have provided the basis for the academic achievement by the students.

(ii) Provisions providing for the employment status of all persons employed by the district or the operator of the school who were not employed by the prior system at the time the school was transferred to the jurisdiction of the district.

(iii) Provisions for the means and timetable for the school's transition and return to the jurisdiction of the school board or other public entity.

(2)(a) When a school has been transferred to the jurisdiction of the Recovery School District, has been operating pursuant to arrangements established by the Recovery School District for four years, and has failed to improve sufficiently to no longer be academically unacceptable, the state board shall take any one of the following actions:

(i) Revoke all school approval.

(ii) Require the Recovery School District to terminate the operational arrangement and provide a different operational arrangement.

(iii) Return the school to the jurisdiction of the city, parish, or other local public school board or other public entity from which it was transferred.

(b)(i) However, the provisions of Subparagraph (a) of this Paragraph shall not apply if the performance of the school as measured by a school performance score pursuant to a uniform statewide program of school accountability established pursuant to rules adopted by the

State Board of Elementary and Secondary Education has improved by at least twenty points during such four-year period.

(ii) Additionally, the provisions of Subparagraph (a) of this Paragraph shall not apply in any subsequent four-year period during which a school continues to be academically unacceptable provided an improvement in the school performance score of at least twenty additional points is achieved.

D. At the time of the transfer of a school to the Recovery School District, the parent or guardian with responsibility for decisions regarding the education of any student attending the school or any student who would be assigned to attend the school may choose to continue to have their child be enrolled in and attend the school under the jurisdiction of the Recovery School District or may exercise an option which shall be made available by the city, parish, or other local public school board or any other public entity from which the school is being transferred to enroll in and attend another school operated by the school board or entity.

E.(1) Annually, the State Board of Elementary and Secondary Education, represented by the superintendent of the Recovery School District, shall submit a written report to the House and Senate committees on education.

(2) The report required by this Subsection shall include:

(a) A listing and description of the status of each school for which the state board has required the development of a plan of reconstitution since the submittal of the last report.

(b) A listing and description of the status of each school which has begun operating pursuant to an approved reconstitution plan since

the submittal of the last report.

(c) A listing and description of the status of each school which has continued to operate pursuant to an approved reconstitution plan since the submittal of the last report.

(d) A listing and description of the status of each school the jurisdiction over which has been transferred to the Recovery School District since the submittal of the last report.

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PART VII. RECOVERY SCHOOL DISTRICT

Part VII is all new law.

§1990. Recovery School District; creation; governance; operation

R.S. 17:1990 is all new law.

A.(1) The Recovery School District, referred to as the "school district" or the "district", is hereby established to provide an appropriate education for children attending any public elementary or secondary school operated under the jurisdiction and direction of any city, parish, or other local public school board or any other public entity, referred to in this Section as "the prior system", which has been transferred to its jurisdiction pursuant to R.S. 17:10.5.

(2) The school district shall be administered by the state Department of Education.

B.(1) The school district shall be considered an intermediate educational unit, subject to the limitations of such units which shall include no authority to levy a tax, but which may include authority to seek and expend federal funding and grant funding and to otherwise seek, obtain, and expend funding with all the same authority of any city, parish, or other local public school board or other public entity

operating a public school.

(2)(a) The school district may provide for the supervision, management, and operation of a school placed under its jurisdiction and receive, control, and expend the local, state, and federal funding attributable to that school, with all the same power and authority as the prior system from which it was transferred subject to the requirements of this Section and R.S. 17:10.5 or with any other power and authority otherwise granted to the district by law. The district shall not contract with any for-profit private provider for the general operation of any school under its jurisdiction or for the general provision of instructional services in any such school.

(b) In providing for the operation of schools within its jurisdiction, at any time the district seeks participation by a college or university or a consortium of colleges and universities to provide for the operation of any school or group of schools, colleges, and universities that historically were established to provide education for African American students in the state shall be included in any opportunity to participate.

(3) The school district may require any city, parish, or other local public school board to provide school support or student support services for a school transferred from its jurisdiction including but not limited to student transportation, school food service, or student assessment for special education eligibility that are compliant with all laws and regulations governing such services. In such case, the school district shall reimburse the actual cost to the system providing such services. If a dispute arises between the school district and the system providing such services regarding the cost of such services to be

reimbursed, the commissioner of administration or his designee shall determine the cost to be reimbursed.

(4) The school district shall have the right to use any school building and all facilities and property otherwise part of the school and recognized as part of the facilities or assets of the school prior to its placement in the school district and shall have access to such additional facilities as are typically available to the school, its students, and faculty and staff prior to its placement in the school district. Such use shall be unrestricted, except that the school district shall be responsible for and obligated to provide for routine maintenance and repair such that the facilities and property are maintained in as good an order as when the right of use was acquired by the district. There shall be no requirement for the district to provide for the type of extensive repair to buildings or facilities that would be considered to be a capital expense. Such extensive repairs shall be provided by the governing authority of the city, parish, or other local public school system or other public entity which is responsible for the facility.

C.(1)(a) The state shall annually appropriate sufficient monies to fund any school in the school district created in this Part in an amount equal to but not less than the school's October first student membership count times one hundred percent of the state share per student from all levels for the city, parish, or other local public school system in which each school placed under the jurisdiction of the district is located as contained in the Minimum Foundation Program budget letter approved by the State Board of Elementary and Secondary Education. The appropriation shall be made to the administering agency for the district and may be expended by the agency for the provision of

educational services to students in the district.

(b) No public monies shall be used to discriminate against protected classes or have the effect of discriminating in providing and ensuring equal education opportunities in Louisiana.

(2)(a) In addition to the appropriation required in Paragraph (1) of this Subsection, any city, parish, or other local public school board which had jurisdiction of a school prior to its transfer to this district annually shall either:

(i) Allocate and transfer to the school district an amount of money equal to the number of students enrolled in such a school times the local per pupil amount received during the prior year by the school system from the following sources, excluding any portion which has been specifically dedicated by the legislature or by voter approval to capital outlay or debt service or which was actually expended by the school board for facilities acquisition and construction as reported to the state Department of Education:

(aa) Sales and use taxes, less any tax collection fee paid by the school system;

(bb) Ad valorem taxes, less any tax collection fee paid by the school system;

(cc) Earnings from sixteenth section lands owned by the school district; or

(ii) Suffer a reduction in the amount of state funds otherwise to be allocated to the city, parish, or other local public school system as contained in the Minimum Foundation Program budget letter approved by the State Board of Elementary and Secondary Education equal to the amount provided in Item (i) of this Subparagraph which reduction shall

be allocated to the district.

(b) In addition to the appropriation required in Paragraph (1) of this Subsection, any public entity, other than a city, parish, or other local public school board which had jurisdiction of a school prior to its transfer to this district shall transfer to the school district an amount of money equal to the average per pupil amount appropriated or allocated for all students times the number of students enrolled in the school transferred from its jurisdiction to the school district from self-generated funds or any other appropriated state funds that exceeds the per pupil amount appropriated pursuant to Paragraph (1) of this Subsection.

(c) All amounts to be appropriated or allocated and transferred pursuant to this Paragraph and Paragraph (B)(3) of this Section shall be estimated or calculated by the state Department of Education based on the most recent local revenue data and projected student counts available. Allocations to be transferred shall be adjusted during the year as necessary to reflect actual student counts and actual prior year local revenue collections.

(3) Except for administrative costs, monies appropriated to the Recovery School District that are attributable to the transfer of a school from a prior school system and monies allocated or transferred from the prior system to the recovery district shall be expended solely on the operation of schools transferred from the prior system to the jurisdiction of the district.

D.(1) The Recovery School District may employ such staff members as it deems necessary. At the time of the transfer of a school to the school district, any certified teacher with regular and direct

responsibility for providing classroom instruction to students who is employed in the transferred school by the prior system shall be given priority consideration for employment in the same or a comparable position by the school district.

(2) Any person employed by the prior system in a transferred school may choose to remain in the employ of the prior system and, in that case, the prior system shall retain and reassign such person consistent with its contractual obligations or policies regarding the retention and reassignment of employees.

E.(1)(a) Except as otherwise provided by law for the operation of the school as a Type 5 charter school, benefits and privileges of any person employed in a school by the school district who was employed by the prior system at the time a school is transferred to the district's jurisdiction shall be the same as those required by law for employees in the city, parish, or other local public school systems of this state.

(b) Notwithstanding any provision of Subparagraph (a) of this Paragraph to the contrary, any person employed by the district in a school who was employed by the prior system at the time a school is transferred to the district's jurisdiction, for the purposes of permanent status and the retention upon return to employment in the prior system of any employment benefit right which requires continuous service or which becomes vested based on years of service, or both, shall be granted an approved leave of absence from the prior system for the period of time the school is under the jurisdiction of the district in order to be employed by the district. The period of time any employee is on such leave shall be considered service time by the prior system at any time the employee returns to the prior system's employment. Such

approved leave shall not require the prior system to provide for benefits during the time the employee on leave is employed by the district.

(2) Except as otherwise provided by law for the operation of a Type 5 charter school, the benefits and privileges of any person employed in a school by the district or employed by any operator of a district school pursuant to any agreement with the district who was not employed by the prior system at the time the school was transferred to the jurisdiction of the district shall be those determined by the district or the operator at the time of such employment in compliance with any requirement of any applicable contract or requirement of law.

F.(1) Except as otherwise provided in this Subsection, only students who would have been eligible to enroll in or attend the pre-existing school under the jurisdiction of the city, parish, or other local public school board or other public school entity prior to its transfer to the Recovery School District may attend. However, all such students shall be eligible to attend notwithstanding any other provision of law to the contrary.

(2) In addition to students who are eligible to enroll pursuant to the provisions of Paragraph (1) of this Subsection, any student who is eligible to participate in a school choice program established by the prior system shall be permitted to enroll in any school operated under the jurisdiction of the Recovery School District which has capacity for another student in the appropriate grade. Maximum capacity by grade shall be determined by the State Board of Elementary and Secondary Education.

G. Notwithstanding any provision of this Part, the school district shall not violate any federal court order, judgment, or consent

decree.

H. The Recovery School District shall terminate pursuant to Part XII of Chapter 1 of Title 49 of the Louisiana Revised Statutes of 1950 at the same time and subject to the same provisions for re-creation as statutory entities made a part of the Department of Education by law.

* * *

§3973. Definitions

As used in this Chapter, the following words, terms and phrases shall have the meaning ascribed to them in this Section, except when the context clearly indicates a different meaning:

* * *

(2) * * *

(b) Charter schools shall be one of the following types:

* * *

R.S. 17:3973(2)(b)(v) is all new law.

(v)(aa) Type 5, which means a pre-existing public school transferred to the Recovery School District pursuant to R.S. 17:10.5 and operated as the result of and pursuant to a charter between a nonprofit corporation and the State Board of Elementary and Secondary Education, or between a nonprofit corporation and a city, parish, or other local school board or other public entity in the case of the renewal of a Type 5 charter of a school that has been transferred back to the jurisdiction of the local school board or other public entity pursuant to R.S. 17:10.5(C). Notwithstanding the provisions of R.S. 17:3991(B)(1), within such Type 5 charter school, only pupils who would have been eligible to enroll in or attend the pre-existing school under the jurisdiction of the city, parish, or other local public school board or

other public school entity prior to its transfer to the Recovery School District may attend. However, all such pupils shall be eligible to attend notwithstanding any other provision of this Chapter to the contrary.

(bb) In addition to pupils who are eligible to enroll pursuant to the provisions of Subitem (aa) of this Item, any student who is eligible to participate in a school choice program established by the prior system shall be permitted to enroll in a Type 5 charter which has capacity for another student in the appropriate grade. Maximum capacity by grade shall be provided in the charter agreement.

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§3983. Chartering process by type; eligibility; limitations; faculty approval; parental approval

A. * * *

(2) * * *

R.S. 17:3983(A)(2)(c) is all new law.

(c) All proposals for a Type 5 charter school shall be made to the State Board of Elementary and Secondary Education, and such proposals may be considered by the state board only upon the recommendation of the administering agency of the Recovery School District.

* * *

(4)(a) ~~For the 1998-1999 charter school proposal period which shall terminate on August 1, 1999, and for all charter proposal periods thereafter through August 1, 2005, no~~ **No** more than the number of charter proposals that would result in the total number of charters entered equaling forty-two, ~~including any such proposals entered into pursuant to Act No. 192 of the 1995 Regular Session of the Legislature~~

~~and those entered into during all preceding chartering periods,~~ may be entered into by all chartering authorities.

* * *

R.S. 17:3983 (F) is all new law.

F. As it relates to Type 5 charters:

(1) The limitations specified in R.S. 17: 3991(B)(1) and (3) and the provisions of (A)(3)(a), (4)(a), (c), and (f), and (5), and (C) and (D) of this Section shall not apply to or limit or restrict the number of such charters.

(2) No proposal for operating such a charter school shall be approved nor shall such a school be operated by any person, whether a natural person or artificial entity, who or which has less than five years of significant experience, as determined by the state board, operating or working for or with a person who operates a public, private, or charter school, a public or private postsecondary institution, or a for-profit business or a non- or not-for- profit entity which provides academic instruction to students.

* * *

§3991. Charter schools; requirements; limitations; renewal; amendment; revocation

* * *

B. Each proposed charter shall contain or make provision for the following:

(1)(a) * * *

R.S. 17:3991(B)(1)(d) is all new law.

(d) The provisions of R.S. 17:3991(B)(1) and (3) shall not apply to Type 5 charters.

* * *

C. A charter school shall:

* * *

(6)(a)(i) Employ Except for Type 5 charter schools to which the requirements provided in Subparagraph (b) of this Paragraph apply, employ teachers certified by the state board or the French Ministry of Education for at least seventy-five percent of the instructional staff employed by the charter school.

~~(b)~~(ii) The remaining portion of the instructional staff shall meet at least one of the following requirements and shall be subject to all provisions of state law relative to background checks applicable to the employment of public school ~~personal~~ personnel:

~~(i)~~(aa) Be authorized under law or state board regulation to teach temporarily while seeking a regular teaching certificate.

~~(ii)~~(bb) Have at least a bachelor's degree or at least ten years of experience related to the teaching position for which he is being hired, demonstrate exemplary skills in his field of expertise, and be providing instruction under the supervision of a certified teacher. Any individual who makes an application for employment under ~~the Subparagraph~~ this Item shall be employed based on a determination of the applicant's qualifications by the charter school.

R.S. 17:3991(C)(6)(b) is all new law.

(b) A Type 5 charter school shall:

(i) Beginning no later than the second school year of operation, have not less than the percentage of teachers certified by the state board than was the case in the school prior to its transfer to the Recovery School District.

(ii) Beginning no later than the third school year of operation, have a teacher certified by the state board teaching every core subject. Core subject shall be defined by the state board by rule.

(iii) All other instructional staff employed in a Type 5 charter school shall meet the same requirements as provided in Item (a)(ii) of this Paragraph.

* * *

H. Any assets acquired by a ~~type~~ **Type** 1, 2, ~~or~~ 3, **or 5** charter school are the property of that charter school for the duration of that school's charter agreement. Any assets acquired by a ~~type~~ **Type** 4 charter school are the property of the local school board. If the charter agreement of any ~~type~~ **Type** 1, 2, ~~or~~ 3, **or 5** charter school is revoked or the school otherwise ceases to operate, all assets purchased with any public funds become the property of the chartering authority. Charter schools are to maintain records of any assets acquired with any private funds which remain the property of the nonprofit organization operating the charter school.

* * *

§3996. Charter schools; exemptions

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C. A charter school established and operated in accordance with the provisions of this Chapter shall comply with state and federal laws and regulations otherwise applicable to public schools with respect to civil rights and individuals with disabilities. Any ~~type~~ **Type** 2 ~~or~~ **Type** **5** charter school shall be considered the local education agency for the purposes of any special education funding or statutory definitions, while the local school board shall remain the local education agency for

any ~~type~~ **Type** 1, 3, or 4 charter school.

* * *

G. All charter schools established and operated in accordance with the provisions of this Chapter shall comply with the provisions of R.S. 39:1301 through 1315. Each Type 1, 3, and 4 charter school annually shall submit its budget to the local school board that approved its charter, and such board shall submit the charter school's budget to the state superintendent of education in accordance with the provisions of R.S. 17:88. Each Type 2 **and Type 5** charter school annually shall submit its budget directly to the state superintendent of education.

H. In addition to the requirements of Subsection G of this Section, the State Board of Elementary and Secondary Education shall adopt rules and regulations for prescribing forms and practices for budgeting, accounting, and financial reporting, both interim and annual, for Type 2 **and Type 5** charter schools.

Section 2. R.S. 36: 651(F) is hereby enacted to read as follows:

§651. Transfer of boards, commission, departments, and agencies to

Department of Education; boards, commissions, and agencies with Department of Education

* * *

R.S. 36:651(F) is all new law.

F. The Recovery School District (R.S. 17:1990) is placed within the Department of Education and shall exercise and perform its powers, duties, functions, and responsibilities in accordance with the provisions of R.S. 36:802.

* * *

Section 3. R.S. 17:3983(A)(5) is hereby repealed.

Section 4. This Act shall take effect and become operative if and when the proposed amendment of Article VIII, Section 3(A) of the Constitution of Louisiana contained in the Act which originated as House Bill No. 629 or Senate Bill No. 225 of this 2003 Regular Session of the Legislature is adopted at the gubernatorial primary election to be held in 2003 and becomes effective.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____